

67108-363 PUS1
Bu 1-2-28**REMARKS**

Applicant respectfully requests reconsideration of this application. Claim 22 is amended above. Claims 1-27 are pending.

The rejection under 35 U.S.C. §101 can be withdrawn.

Claim 22 has been amended to recite at least one overlay node, which is more than software, per se. Therefore, the claim satisfies 35 U.S.C. §101. Applicant respectfully requests that that rejection be withdrawn.

The rejections under 35 U.S.C. §103 should be withdrawn.

Applicant respectfully traverses the rejections under 35 U.S.C. §103 based upon the proposed combination of the *Chan, et al.* reference and the *Osterman* reference. There is no *prima facie* case of obviousness.

Applicant respectfully disagrees with the Examiner's suggestion that the *Chan, et al.* reference teaches a probing module consistent with the probing module recited in Applicant's claims. Further, the combination cannot be made.

The *Chan, et al.* reference teaches sending an arbitration primitive "through *all*" the nodes on the sub-loop so that the "local winner" will receive its own arbitration primitive back and know that it has won the local arbitration. This allows the local winner source node to start a transaction. (Column 13, lines 10-26). Sending an arbitration primitive to all of the nodes on a loop is not the same thing as probing highest priority nodes. Instead, the *Chan, et al.* reference teaches sending an arbitration primitive along the entire loop. The node having an identity corresponding to the arbitration primitive will recognize itself as the local winner and perform the functions described in the *Chan, et al.* reference.

It is impossible to modify the *Chan, et al.* reference so that it would somehow probe higher ranking nodes more frequently than other nodes without changing the basic principle of operation in the *Chan, et al.* reference. Such a modification to the reference cannot be made as explained, for example, in MPEP 2143.01(V) and (VI). In other words, the proposed modification to the *Chan, et al.* reference cannot be made and the combination with *Osterman* is not permitted.

Further, what the *Osterman* reference actually teaches is requiring "more frequent statusing" of a device based upon the importance of that device to a particular client application

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that requires such statusing. (Paragraph 0079). Obtaining status information as taught by the *Osterman* reference has nothing to do with the circulation of an arbitration primitive as taught in the *Chan, et al.* reference. Therefore, the teachings of the two references are not compatible or in any way combinable to provide a workable result. They are addressing entirely different scenarios and the statusing check of the *Osterman* reference has no applicability to the circulation of the arbitration primitive in the *Chan, et al.* reference. In other words, the proposed combination does not provide any meaningful or workable result. There would be no benefit to adding the statusing check of the *Osterman* reference to the *Chan, et al.* reference because it would have no impact on how the arbitration primitive is circulated according to the teachings of the *Chan, et al.* reference.

For any one of the above reasons, there is no *prima facie* case of obviousness. The rejections under 35 U.S.C. §103, which are all based upon the proposed combination of the *Chan, et al.* and *Osterman* references must be withdrawn.

The rejections of claims 3 and 23-26 based upon the proposed further addition of the *Corrigan, et al.* reference has the same deficiency because it is based upon the improper base combination of the *Chan, et al.* and *Osterman* references. The combination cannot be made and there is no *prima facie* case of obviousness.

This case is in condition for allowance.

Respectfully submitted,

CARLSON, GASKEY & OLDS

By: 

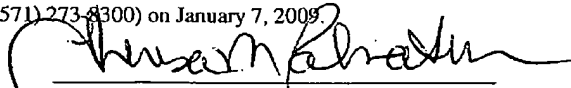
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CERTIFICATE OF FACSIMILE

I hereby certify that this Response, relative to Application Serial No. 10/762,391, is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on January 7, 2009.


Theresa M. Palmateer

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